THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 10182 OF 1998

Dated 11th April, 2007

Between:

G.Rajeswara Reddy

… Petitioner

And

The Collector, Prakasam District at
Ongole and others.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioner has questioned the notice dated 22.9.1997 issued by the Mandal Revenue Officer, Ardhaveedu Mandal, demanding an amount of Rs. 2,83,000/- from the petitioner.

The necessary facts, in brief, are as follows:

During the year 1993, an auction was conducted for rights to cut, collect and remove beedi (Tuniki) leaves for Giddalur and Turimella ranges for the period from 1.1.1993 to 31.12.1993. The writ petitioner participated in the auction and became the highest bidder for purchase of Tuniki leaves in Turimella range for Rs.1,98,000/- and in Giddalur range for Rs.1,05,000/-. Immediately after conclusion of the sales, the petitioner paid an amount of Rs.10,000/- for each range and subsequently, the said sales were confirmed as per the tender conditions by the Conservator of Forests, Guntur, who is the competent authority for confirmation of sale, vide proceedings Rc.No.764 and 76/93 dated 11.3.1993 with a condition that the petitioner should pay the balance bid amount in three instalments viz. Rs.56,000/- on 26.3.2993, Rs.66,000/- on 26.4.1993 and Rs.66,000/- on 26.5.1993 in so far as Turimella range is concerned, and, Rs.25,000/- on 20-3-1993, Rs.35,000/- on 20.4.1993 and Rs.35,000/- on 20.5.1993 so far as Giddaluru range is concerned. The petitioner was informed in the confirmation orders that if he fails to pay the instalments, the sales would be cancelled by forfeiting the amounts already paid by him and the units would be resold at the risk and loss of the petitioner and the differential amount would be recovered from the petitioner as per the provisions

of the Revenue Recovery Act. The petitioner received the confirmation orders on 16.3.1993. But, however, he had submitted a representation seeking cancellation of the lease-units and he did not execute the agreement as per the conditions of sale notified. As the petitioner failed to execute the agreement by depositing the necessary amounts as per the confirmation proceedings, the sale in favour of the petitioner was cancelled by order dated 21.3.1993 and subsequently, the units were re-auctioned on 12.4.1993. However, the amount fetched in the resale in respect of Turimella range was only Rs.32,000/- as against Rs.1,88,000/- due from the petitioner and the difference was Rs.1,66,000/-, and the amount fetched in respect of Giddalur range was Rs.24,000/- in the resale as against the amount of Rs.95,000/- due by the petitioner and there was difference of Rs.71,000/-. On the ground that after the offers of the petitioner were accepted and the sales were confirmed, they were cancelled in view of the fact that the petitioner did not execute the agreement, as per the tender conditions, the differential amount between the first sale amount and the amount fetched on resale consequent to cancellation of the sales confirmed in favour of the petitioner, was directed to be recovered from the petitioner by initiating proceedings under the Revenue Recovery Act. Pursuant to such communication from the fourth respondent, the impugned notice is issued. The said notice is questioned, mainly, on the ground that the sales were cancelled during the year 1993 and thereafter, for four long years, no information was furnished to the petitioner by the fourth respondent as to recovery of any amount on account of loss suffered in the sale of beedi (tuniki) leaves.

It is submitted by the learned counsel for the petitioner that inasmuch as no liability was ascertained by conducting enquiry, it is not open for the Mandal Revenue Officer to initiate proceedings under the Revenue Recovery Act.

In the counter affidavit filed on behalf of the respondents 1 to 3, it is stated that sale notice was issued by the 4th respondent calling for the bids in open auction of tuniki leaves to be conducted on 2.11.1992. The petitioner participated in the sales and became the highest bidder for the sale of Tooki leaves in Thurimella Range for Rs.1,98,000-00 and in Giddalur Range for Rs.1,05,000 and immediately after conclusion of the sales on 1.3.1993 the petitioner paid Rs.10,000/- each for Thurimella and Giddalur Range. Thereafter, the competent authority issued orders of confirmation to the petitioner vide proceedings dated 11.3.1993 with a condition that the petitioner should pay the amounts on the dates mentioned therein. It was also mentioned that the petitioner should pay security deposit @ 6.25% over the full sale amount of each sale besides sales tax and income tax at the prevailing rates on or before 20th and 25th March, 1993 for both the lease amounts. It was also informed to the petitioner that if he fails to pay the balance 1/3 amount, security deposit, sales tax and income-tax within the time stipulated, the sale would be cancelled besides forfeiting the amounts already paid by him and the units will be resold at his risk and loss and the arrears if any arising by resale will be recovered from him under Revenue Recovery Act vide D.F.O's proceedings dated 11.3.1993. The petitioner received the confirmation orders on 16.3.1993, but, he deliberately failed to comply with conditions imposed in the sale notice and confirmation orders and failed to pay the balance 1/3rd amount as also security deposit, sales tax and Income tax. Moreover, the petitioner himself voluntarily put in a representation on 20.3.1993 to the 4th respondent requesting to cancel both the lease units of Giddalur and Thurimella Ranges as he is reluctant to execute the agreement for his domestic reasons. Since the petitioner failed to pay 1/3rd of the sale amount, security

deposit, sales tax and income tax and execute the agreement with 4th respondent and expressed his inability to execute the agreement and gave his willingness to cancel the units, there was no other option left to the 4th respondent except to cancel the sales of the two units. In the cancellation order, the petitioner was informed that the two lease units would be put to resale at his risk and loss and he would be held responsible for any loss of revenue that arises by resale and such revenue will be recovered from him as arrears under the Revenue Recovery Act. The cancellation order was sent to the petitioner to his postal address by registered post acknowledgement due by the 4th respondent. The units were put to resale on 12.4.1993 for the balance lease period. After resale of the lease units, an amount of Rs.1,56,000/- as against Thurimella range and an amount of Rs.71,000/- as against Giddalur Range totalling to Rs. 2,27,000/- was found to be due from the petitioner and as there is no other way to recover such huge amount from the petitioner, the Mandal Revenue Officer, Ardhaveedu on being addressed by the fourth respondent had issued notice to the petitioner to pay the amount. It is stated that the petitioner had become a defaulter and it became necessary to recover the amount under the Revenue Recovery Act.

Counter affidavit has also been filed by the fourth respondent stating that the sale notification was published in the District Gazette stipulating various conditions. It is stated that though the sale was confirmed accepting the offer made by the petitioner, the petitioner did not execute the agreement and violated the tender conditions. It is stated that as per the conditions of the tender notification, it is permissible for the respondents to recover the differential amount from the petitioner along with security deposit @ 6.25% over the full sale amount of each sale besides sales tax and income tax at the

prevailing rates, by initiating proceedings under the Revenue Recovery Act, and, as the petitioner failed to pay the differential amount, the Mandal Revenue Officer was addressed to recover the same and consequent thereto, he issued the present notice demanding payment of Rs.2,83,000/-.

It is to be noted that in the counter affidavits filed by the respondents, it is stated that the differential amount between the original sale amount and the amount fetched during resale on 12.4.1993 so far as Turimella range is concerned is Rs.1,56,000/- and so far as Giddalur range is concerned, it is Rs.71,000/-. But, however, notice is issued demanding an amount of Rs.2,83,000/- i.e. the entire amount. Even assuming that the differential amount is to be recovered from the petitioner, the same comes to Rs.2,27,000/- and not Rs.2,83,000/- as shown in the impugned demand notice. The contention of the learned counsel for the petitioner that unless there is quantification of the amount, no steps can be taken under the provisions of the Revenue Recovery Act, cannot be accepted for the reason that the impugned notice is a simple demand, but not a statutory notice under the provisions of the Revenue Recovery Act.

In that view of the matter, inasmuch as the demand made is not in conformity with the figures as mentioned in the counter affidavit itself and in the absence of giving any particulars with regard to the demanded amount in the counter affidavit, I deem it appropriate to set aside the notice dated 22.9.1997, while keeping it open to the respondents to issue notice giving the particulars of the alleged liability of the petitioner to recover the same as per the tender conditions. It is made clear that if the petitioner is liable for the loss caused on account of failing to execute the agreement in pursuance of the confirmation order, it is open for the respondents to issue fresh notice giving the details of the loss and take steps in

accordance with the tender conditions.

The writ petition is allowed to the extent indicated above. No costs.

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11-4-2007

R.SUBHASH REDDY, J.

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